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COMMITTEE ON THE JUDICIARY,)	
UNITED STATES HOUSE OF)	
REPRESENTATIVES)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:08-cv-00409 (JDB)
)	
HARRIET MIERS, et al.)	
)	
Defendants.)	
)	

The Rutherford Institute, Judicial Watch, Citizens for Responsibility and Ethics in Washington (“CREW”), and the Brennan Center for Justice respectfully request the Court’s leave to participate as amici curiae in the above-captioned case in opposition to Defendants’ motion to dismiss for the reasons discussed below. Pursuant to Local Civil Rule 7(m), counsel for amici has conferred with counsel for Plaintiff, who consents to this motion, and counsel for Defendants, who takes no position on this motion. At least one other group has filed an amicus brief in this case that no party opposed.

1. Amici organizations are dedicated to advocating for the Constitution's Separation of Powers. The Rutherford Institute is an international civil liberties organization that specializes in providing legal representation without charge to individuals whose civil liberties are

threatened or violated. The Rutherford Institute is a staunch advocate of government accountability, believing that the best guarantee of freedom is, in the words of Abraham Lincoln, a government “of the people, by the people, for the people.” Judicial Watch is a not-for-profit, educational organization that seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of the law. Judicial Watch is participating as amicus curiae in this matter because it has an active and longstanding interest in issues involving the assertion and scope of the presidential communications privilege. CREW is a non-profit corporation that seeks to promote accountability, transparency and integrity in government officials and the government decision-making process. CREW has experienced a disturbing trend away from government openness that includes an effort by the Executive to thwart groups such as CREW from using the federal courts to resolve its claims of executive misconduct. CREW seeks to participate as an amicus here to ensure the fullest presentation of important issues of Separation of Powers that this lawsuit raises. The Brennan Center for Justice is a nonpartisan organization that seeks to protect and defend the institutions of American Democracy. We fight to set meaningful limits on the exercise of executive power and to preserve the Constitution’s checks and balances. Our work has taught us that maintaining the effective functioning of the Constitution’s scheme of separated powers is necessary for the preservation of essential liberties.

2. “[T]he court has broad discretion to permit [an organization]’s participation in [a] suit as an amicus curiae.” *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Eng’rs*, 519 F.Supp. 2d 89, 93 (D.D.C. 2007). “Generally, a court may grant leave to appear as an amicus if the information offered is timely and useful.” *Ellsworth Assocs. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (internal quotation marks omitted). When amici “have a special interest

in th[e] litigation as well as a familiarity and knowledge of the issues raised therein that could aid in the resolution of th[e] case,” this Court has granted amici leave to participate. *Id.*

3. Since early 2007, the U.S. House of Representatives Committee on the Judiciary has been investigating the forced resignations of nine United States Attorneys. The investigation was launched to ascertain the facts concerning allegations of improper conduct by Executive Branch officials and to consider whether any existing law ought to be changed. Pursuant to this investigation, the Committee issued subpoenas to two executive officials who, at the President’s instruction and based on a claim of absolute privilege, declined to appear before Congress as directed. Amici address the question whether the President’s claim of absolute privilege for aides can be subjected to judicial review. We believe it can, and that grave harm would be inflicted on the constitutional Separation of Powers otherwise.

4. Amici organizations together have substantial experience working on issues arising from Separation-of-Powers disputes and congressional investigations into misconduct. Amici are deeply concerned about the impact that the President’s claim of executive privilege will have on Congress’s ability to oversee effectively Executive Branch conduct. Amici have differing ideological orientations and often diverge on substantive policy issues. They stand united, however, in their belief that the Constitution’s checks and balances are this Nation’s greatest contribution to democracy. Amici’s decades of experience on these issues bear directly on the questions raised by this case. They therefore submit the attached brief to illuminate the dangers posed by the arguments set forth in Defendants’ motion to dismiss.

5. Accordingly, amici request leave of the Court to participate in this matter as amici curiae.

A proposed order permitting amici to file the attached Memorandum of Law is submitted herewith.

Respectfully submitted,

/s/ Sidney S. Rosdeitcher

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Dated: May 29, 2008

Counsel for Amici Curiae

^{*} Admission pending.

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2008, amici's motion for leave, proposed order granting leave, and amici's memorandum of law in opposition to Defendants' motion to dismiss are being filed electronically with the Clerk of Court by e-mail (dcd_cmecf@dec.uscourts.gov) for filing with the Court's CM/ECF system, which will generate automatic service of such filing upon all parties registered to receive such notice.

In addition, electronic copies were sent via e-mail to the following:

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/s/ Sidney S. Rosdeitcher

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